



U.S. Environmental Protection Agency  
Washington D.C. 20460

**Justification for an Exception to Fair Opportunity**

**Authority:** FAR 16.505, "Exception to Fair Opportunity"

**1. Identification of the agency and the contracting activity**

**Agency:** U.S. Environmental Protection Agency

**Contracting Activity:** Headquarters Procurement Operations Division

**Requisition No.:** Follow on to the eRulemaking Contract GS00T99ALD0202

**Contractor:** Booz Allen Hamilton

**2. Nature and/or description of the action:**

The EPA is requesting a one-year, sole-source contract to be awarded to the current vendor, Booz Allen Hamilton, Inc. This contract will follow on to the existing eRulemaking support contract which allows Federal agencies to more effectively manage their regulatory dockets and to enable citizens to search, view and comment on regulations issued by the U.S. government.

**3. Description of the supplies or services required to meet the agency's needs (including the estimated value)**

The current contractor Booz Allen Hamilton will provide IT infrastructure, web/application development, operations, maintenance, enhancement, project management, training, security and support services for Regulations.gov, the Federal Docket Management System and FOIA-online. The eRulemaking program supports a web-based application ([www.fdms.gov](http://www.fdms.gov)) that allows Federal agencies to more effectively manage their regulatory dockets. The program also launched the Regulations.gov web site (<http://www.regulations.gov>) to enable citizens to search, view and comment on regulations issued by the U.S. government. Collectively, these systems are referred to as the Federal Docket Management System (FDMS). The FOIA-online system was added to the platform last year and serves several Federal partners as well as the public requesting information under FOIA. Booz Allen Hamilton has been performing well during the contract period and achieved CPAR ratings from satisfactory to exceptional with continuous improvements year over year.

**Estimated value:**

\$6.5 Million Total Value.

**4. Identification of the exception to fair opportunity (see 16.505(b)(2)) and the supporting rationale, including a demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the exception cited. If the contracting officer uses the logical follow-on exception, the rationale shall describe why the relationship between the initial order and the follow-on is logical (*e.g.*, in terms of scope, period of performance, or value)**

The EPA has identified an exception to fair opportunity under FAR 16.505 using the following authority:

- FAR 16.505(b)(2)(i)(B) – Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized.

This sole source action is critical as to ensure uninterrupted operations of the cross-agency program that fulfills an essential government service in facilitating public participation in the Federal regulatory process, and it is imperative that service not lapse. The need for the services is so critical that providing a fair opportunity at this time would result in a disruption of service and the one-year sole source award would ensure that services continue without interruption. The reason that any disruption of service to the participating agencies is unacceptable is that the inability for participating agencies to receive and respond to public comments on proposed regulations may result in significant delays in the promulgation of time sensitive regulations, many of which are mandated to be completed by Congress or court order in a given period of time, or an emergency rulemaking from the Department of Homeland Security. Based on this information, Regulations.gov was determined to be a critical system with respect to government functions during government shutdowns and has always been kept operational.

Furthermore, the eRulemaking program is mandated by the E-Government Act of 2002 (H.R. 2458/S.803). Section 206 directs Federal departments and agencies to post to the Internet regulatory dockets using [www.regulations.gov](http://www.regulations.gov) and accept electronic submissions to online dockets. The services provided by the eRulemaking program are also mandated by the Executive Order 13563, "Improving Regulation and Regulatory Review." The program aligns with the E-Government Act of 2002 and Clinger-Cohen Act of 1996 as an e-Gov program for Federal rulemaking internally within the government to improve the quality of Federal rulemaking decisions through greater input, to improve the efficiency of the rulemaking process, to enhance process improvements both technically and for user ease, and to achieve cost savings.

Booz Allen Hamilton (BAH) is uniquely qualified to provide services under this six month base period sole source contract because they are inextricably intertwined in the current system infrastructure and software design. Other contractors may have the basic technical expertise to eventually provide similar levels of support and operations to the system. However, utilization of another contractor would at this time result in a disruption of service and pose the unacceptable risk of unexpected downtime as other

contractors are not yet familiar with the system and its design. Thus, BAH is the only contractor that can assuredly provide the continued level of service required without disruption or delays. During the sole source contract period, EPA will move forward on the development of a long term, fully competed support contract, which will have a period of time utilized for the transfer of knowledge from the existing contractor to the long term awardee.

Due to several budgetary constraints that all Agencies faced in Fiscal Year 2013, which included the sequestration (resulting in furloughs at many Agencies), hiring freezes, and the government shutdown, the eRulemaking program was not able to establish the cross-agency workgroup to assist on the contract re-compete process. This sole source request is in no way the result of a lack of planning or preparation, but rather a decision well into the pre-solicitation process to be more transparent with and have greater involvement from the involved partner agencies in the development of a scope of work and choosing the best type and structure for the contract for the future open competition, which will result in the best value for government. The eRulemaking program is presently convening the partner agency workgroup in order to strengthen the requirements for the new contract. This workgroup will review the eRulemaking requirements, subtasks within the SOW, and the pricing structure as quickly and efficiently as possible.

Especially because the eRulemaking program is mandated by the E-Government Act of 2002, and it affects multiple Federal partner agencies and a wide breadth of public users, it is urgent and necessary that service not lapse.

**5. Determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.**

The Contracting Officer is placing the order against a Federal supply schedule, GSA Alliant GWAC. The GSA has already determined the cost of services under scheduled contracts to be fair and reasonable, and the contractor's proposed rates, when compared to the contractor's published commercial rates, are reasonable for the requirement.

The contractor submitted Fiscal Year 2014 Forward Pricing Direct Labor Rates to the Defense Contract Management Agency (DCMA) and Defense Contract Audit Agency (DCAA), on May 1, 2013 for use in proposals beginning June 1, 2013. The Forward Pricing Direct Labor rates are based upon the March 2013 salary report and are adjusted based upon the date of the current salary report.

The DCMA Administrative Contracting Officer (ACO) issued a Forward Pricing Rate Recommendation (FPRR) for FY14-FY16 for use by the Government in negotiations and reflects the same direct labor rates submitted on May 1, 2013.

The costs include an Anticipated Wage Increase (AWI) factor applied to the base

hourly rates of our current salary report data as of December 2013. This AWI is in line with the annual inflation rate.

**6. Other facts supporting the use of other than full and open competition.**

None.

**7. Include a statement of the actions, if any, the Agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required.**

A notice of intent to award a sole source was posted January 17<sup>th</sup>, 2014 on FedBizOpps for 15 days. No responses were received regarding the posting.

The EPA will follow an acquisition strategy that will maximize competition and will perform an assessment of contractors' capabilities for a long term contract. Contractors will be provided adequate time to submit packages for consideration for the long-term follow-on contract.

**8. Contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.**

The Contracting Officer (CO) certifies that the justification is accurate and complete to the best of the CO's knowledge given the information provided by the Office of Environmental Information (OEI).

**9. Evidence that any supporting data that is the responsibility of technical or requirements personnel (*e.g.*, verifying the Government's minimum needs or requirements or other rationale for an exception to fair opportunity) and which form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel.**

The original technical needs and requirements were reviewed and validated by the Technical Lead, Patrick Micielli, when the current contract was created. These needs and requirements have been reaffirmed by the current technical lead, Adam McWilliams, during this contract development process. EPA plans to utilize the next 6 months to reaffirm the requirements with Federal partners in advance of releasing the new solicitation.

**10. Approvals: Determination by the approving official that one of the circumstances in (b)(2)(i)(A) through (E) of this section applies to the order.**

**Contracts Officer Representative (COR)**

I certify that the above information is accurate and complete.

SIGNED

12/11/2013

\_\_\_\_\_  
Holly Douglas  
eRulemaking PMO  
Office of Information Collection  
Office of Environmental Information

\_\_\_\_\_  
Date

**ERM Project Manager's CERTIFICATION**

I certify that the above information is accurate and complete.

SIGNED

12/11/2013

\_\_\_\_\_  
Valerie Kovacevic, Project Manager  
eRulemaking PMO  
Office of Information Collection  
Office of Environmental Information

\_\_\_\_\_  
Date

**PROGRAM OFFICE DIVISION DIRECTOR'S CERTIFICATION**

I certify that the above information is accurate and complete.

SIGNED

12/11/2013

\_\_\_\_\_  
Andrew Battin, Director  
Office of Environmental Information

\_\_\_\_\_  
Date

## **CONTRACTING OFFICER'S DETERMINATION & CERTIFICATION**

I have reviewed the above findings and certify that they are sufficient to justify the use of the sole source method of procurement under the cited authority. I certify that the notice of intent to award a sole source contract was published in accordance with Federal Acquisition Regulation (FAR) 16.505, FAR 5.301 and FAR 6.302-1 and that no responses were received. I recommend that the EPA management approve the use of the sole source procurement method for this proposed contract.

I certify that the above justification is accurate and complete to the best of my knowledge and belief.

SIGNED 2/6/2014

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Andrew Howe, Contract Specialist Information Resources Management Procurement Service Center Headquarters Procurement Operations Division Office of Acquisition Management	Date
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SIGNED 2/6/2014

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Lin Pinskey, Contracting Officer Information Resources Management Procurement Service Center Headquarters Procurement Operations Division Office of Acquisition Management	Date
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## **PART V: APPROVAL**

SIGNED 2/11/2014

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Patrick Simien, Service Center Manager Information Resource Management Procurement Service Center Headquarters Procurement Operations Division Office of Acquisition Management	Date
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REVIEWED 2/27/2104

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Office of General Counsel Office of General Counsel Legal Counsel Advisory Group Office of Acquisition Management	Date
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SIGNED 3/5/2014

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Susan Moroni Competition Advocate Office of Acquisition Management	Date
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